

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed March 17, 2003. At the time of the Final Office Action, Claims 1, 3-19, 24 and 25 were pending in this Application. Claims 1, 3-19, 24 and 25 were rejected. To expedite allowance and further clarify the invention, Applicant has amended Claims 1, 8-9 to better define various features of the invention. Applicant has canceled Claims 12-19. Applicant respectfully requests reconsideration and favorable action in this case.

Rejection under 35 U.S.C. § 102

Claims 1, 5, 7-19, 24 and 25 were rejected by Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,621,035 issued to Mark B. Lyles et al. (hereinafter "'035 Lyles"). Applicant respectfully traverses and submits the '035 Lyles reference does not teach the invention of amended Claims 1, 3-11, 24 and 25. Specifically, the amended claims require a composition having "mean pore diameters about 50 microns to about 600 microns." It is respectfully submitted Lyles '035 does not teach or suggest such a composition. Lyles '035 does not specify a mean pore diameter of the composition. In addition, Lyles '035 specifies that the composition has "less than 1% cristobalite contamination." See '035 Lyles Abstract. Cristobalite is caused by the rate of heating the composition to form the porous material, if heated rapidly to a maximum temperature, cristobalite formation is increased. The Lyles '035 reference teaches to avoid cristobalite formation calling it a "contamination." See '035 Lyles Abstract. Here, the amended claims require a minimum of 50% cristobalite. Applicant respectfully requests the amended claims (1, 3-11, 24 and 25) are patentably distinct over Lyles '035 and requests favorable action thereon.

Claims 1, 3-5, 7-19, 24 and 25 were rejected by Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,951,295 issued to Mark B. Lyles et al. (hereinafter "'295 Lyles"). Applicant respectfully traverses and submits '295 Lyles does not teach the invention of amended Claims 1, 3-11, 24 and 25. Applicant respectfully traverses and submits amended Claims 1, 3-11, 24 and 25 are patentably distinct from '295 Lyles in that '295 Lyles fails to teach or suggest a composition having "mean pore diameters of about 50 microns to about 600 microns." Lyles '295 teaches "mean pore diameters of greater than 10 microns." Col. 2,

lines 62-63. Moreover, the '295 Lyles reference teaches nothing in regards to "cristobalite" formation. It certainly cannot be said the '295 Lyles reference teaches from at least 50% to about 100% cristobalite formation or that any cristobalite formation is desired; indeed, the '295 Lyles reference is silent on the subject. And as noted, if "cristobalite" formation is desired, one simply quickly heats the composition to the maximum temperature during processing to form the porous inventive material of this application. Applicant respectfully submits amended Claims 1, 3-11, 24 and 25 are allowable and requests favorable action thereon.

Rejection under 35 U.S.C. § 103

Claims 1, 2, 5 and 7-26 stand rejected by Examiner under 35 U.S.C. § 103(a) as being unpatentable over '035 Lyles. Applicant would like to bring to the Examiner's attention that Claims 2, 20-23 and 26 were cancelled without prejudice or disclaimer in the Amendment filed December 3, 2002 which is reflected in the Office Action Summary mailed March 17, 2003, and therefore Applicant believes that the Claims rejected under this paragraph to be Claims 1, 5, 7-19, 24 and 25. Therefore, Applicant respectfully traverses and submits amended Claims 1, 3-11, 24 and 25 are distinguishable over '035 Lyles. Specifically, the amended claims require a composition having "mean pore diameters about 50 microns to about 600 microns." It is respectfully submitted Lyles '035 does not teach or suggest such a composition. Lyles '035 does not specify a mean pore diameter of the composition. In addition, Lyles '035 specifies that the composition has "less than 1% cristobalite contamination." See '035 Lyles Abstract. Cristobalite is caused by the rate of heating the composition to form the porous material, if heated rapidly to a maximum temperature, cristobalite formation is increased. The Lyles '035 reference teaches to avoid cristobalite formation calling it a "contamination." See '035 Lyles Abstract. Here, the amended claims require a minimum of 50% cristobalite. Applicant respectfully requests the amended claims (1, 3-11, 24 and 25) are patentably distinct over Lyles '035 and requests favorable action thereon.

Claims 1-5 and 7-26 were rejected by Examiner under 35 U.S.C. § 103(a) as being unpatentable over '295 Lyles. Again, Applicant would like to bring to the Examiner's attention that Claims 2, 20-23 and 26 were cancelled without prejudice or disclaimer as

indicated above, therefore Applicant believes that the Claims rejected under this paragraph to be Claims 1, 3-5, 7-19, 24 and 25. Therefore, Applicant respectfully traverses and submits amended Claims 1, 3-11, 24 and 25 are patentably distinct from '295 Lyles in that '295 Lyles fails to teach or suggest a composition having "mean pore diameters of about 50 microns to about 600 microns." Lyles '295 teaches "mean pore diameters of greater than 10 microns." Col. 2, lines 62-63. Moreover, the '295 Lyles reference teaches nothing in regards to "cristobalite" formation. It certainly cannot be said the '295 Lyles reference teaches from at least 50% to about 100% cristobalite formation or that any cristobalite formation is desired; indeed, the '295 Lyles reference is silent on the subject. And as noted, if "cristobalite" formation is desired, one simply quickly heats the composition to the maximum temperature during processing to form the porous inventive material of this application. Applicant respectfully submits amended Claims 1, 3-11, 24 and 25 are allowable and requests favorable action thereon.

Claim 6 was rejected by Examiner under 35 U.S.C. § 103(a) as being unpatentable over '035 Lyles or '295 Lyles in view of U.S. Patent 6,063,395 issued to Tommi Markkula et al. (hereinafter "Markkula"). Applicant respectfully traverses and submits for the reasons stated above, the combination, even if proper which the Applicant does not concede, of either Lyles reference with Markkula would not teach or suggest the invention of amended Claims 1, 3-11, 24 and 25.

CONCLUSION

Applicant appreciates the Examiner's careful review of the application. Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of the claims, as amended.

The Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0383 of Baker Botts L.L.P.

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PATENT APPLICATION
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If there are any matters concerning this application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2606.

Respectfully submitted,

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